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MAY 31 2002

m/047/010

SECRETARY, BOARD OF
OIL, GAS & MINING

**BEFORE THE BOARD OF OIL, GAS, AND MINING
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH**

IN THE MATTER OF THE AMENDED REQUEST FOR AGENCY ACTION OF AMERICAN GILSONITE COMPANY FOR APPROVAL OF SELF-BONDING/ ESCROW AGREEMENT PROPOSAL FOR ITS MINING OPERATIONS LOCATED IN UTAH COUNTY, UTAH	FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER DOCKET NO: 2002-005 CAUSE NO: M/047/010
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This cause came on for hearing before the Utah Board of Oil, Gas and Mining (the "Board") on Wednesday, May 22, 2002, at the hour of 10:00 a.m. The following Board members were present and participated in the hearing:

Elise L. Erler, Chair
Allan Mashburn
Stephanie Cartwright
James Peacock
Kent R. Petersen
Robert J. Bayer; and
Douglas E. Johnson

Attending and participating on behalf of the Division of Oil, Gas and Mining (the "Division") were Mary Ann Wright, Associate Director; D. Wayne Hedberg, Permit Supervisor, Minerals Reclamation Program and Steve Schneider, Oil and Gas Audit Manager. The Board and the Division were represented by Thomas A. Mitchell, Esq., and Kurt E. Seel, Esq., Assistant Attorneys General, respectively.

Testifying on behalf of Petitioner American Gilsonite Company ("AGC" or "Petitioner") were Ted Stevens, Esq., Vice President and General Counsel, and Earl

White, Vice President of Operations. A. John Davis, Esq., Pruitt, Gushee & Bachtell, appeared as attorney on behalf of AGC.

The Division provided the Board information and guidance on the Amended Request for Agency Action. No statements were made at the hearing in opposition to the Amended Request for Agency Action and no other parties appeared or participated at the hearing.

The Board, having considered the testimony presented and the exhibits received into evidence at the hearing, being fully advised, and for good cause appearing, hereby makes the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. AGC is an Oklahoma corporation in good standing and is qualified to conduct business in the State of Utah.
2. AGC owns, mines and processes gilsonite ore near Bonanza, Utah. AGC and its predecessors have mined gilsonite in that area since the early 1900's.
3. The Utah Mined Land Reclamation Act, UCA §§ 40-8-1 et. seq., (the "Act"), requires that upon cessation of mining operations, the operator shall complete reclamation of the mine site. Further, the Act and the rules adopted thereunder, specifically Utah Admin. Code Rule R647-4-113, require a mining operator to provide financial assurances, in the form an approved reclamation bond, a self bonding

agreement, an escrow agreement, or a certificate of deposit, in an amount sufficient to meet its reclamation obligations.

4. AGC currently has in place a \$324,900.00 surety bond for reclamation of its mining operations issued by Travelers Property Casualty (the "Bond"). The Bond meets the Division's rating requirements of an A- or better financial performance rating under Utah Administrative Rule R647-4-113.4.11.

5. The Division has established AGC's current reclamation obligation at \$514,000.00. The difference between the \$514,000.00 current reclamation obligation and the Bond of \$324,900.00 is \$189,100.00.

6. As a small company, AGC has been unable to obtain an increase in its Bond with Travelers or to find a substitute or supplemental bond with another A- rated company. In its request AGC proposes a self bonding/escrow agreement with the State of Utah to cover the \$189,100.00 balance on its reclamation obligation. Specifically, AGC proposes to enter into a self bonding agreement ("Self Bonding Agreement") with the Board together with a pledge and escrow agreement ("Escrow Agreement"). Under these agreements it would self bond initially for the \$189,100.00 and concurrently enter into the Escrow Agreement to escrow four equal annual payments of \$47,275.00. The first payment would be made in to the escrow 15 days from the entry of this Order, and additional annual payments of \$47,275.00 would be due on the 15th of June each year thereafter for three years. Through the escrow, AGC will reduce the self bond to

\$141,825.00 by June 16, 2002; to \$94,550.00 by June 16, 2003, to \$47,275.00 by June 16, 2004 and to \$0.00 by June 16, 2005.

7. The Board is authorized to approve self bonding agreements under UCA § 40-8-14(3) and governing regulations. Under subsection 3(b) of said section, in making the decision to approve a self bond the Board is to consider:

- (i) the operator's:
 - (A) financial status;
 - (B) assets within the state;
 - (C) past performance in complying with contractual agreements; and
 - (D) facilities available to carry out the planned work.
- (ii) the magnitude, type and costs of approved reclamation activities planned for the land affected; and
- (iii) the nature, extent, and duration of the operations under the approved notice.

8. Based upon the sworn testimony of AGC's witnesses and the exhibits received into evidence, namely the audited financial statements for years 1999, 2000 and 2001 and the Statement of Financial Condition submitted by AGC, the Board finds that the Petitioner's financial status, its assets within the State and the facilities available to carry out the planned work, its past performance and presence in the State of Utah, the relatively small magnitude of the reclamation costs to be addressed by the self bonding portion, and the short duration of and declining balance of the reclamation obligation guaranteed by the self bonding and indemnity agreement support and justify the Board's approval of AGC's proposed Self Bonding Agreement.

9. The Board finds that AGC has both the financial and technical ability to reclaim its operations and is currently conducting and intends to conduct concurrent reclamation of its operations during the period in which the Self Bonding Agreement is in effect.

10. Notice was duly published as required by Utah Admin. Code Rule R641-106-100.

11. The vote of the Board Members present at the hearing in this cause was unanimous in favor of granting the Amended Request for Agency Action, subject to the conditions set forth in this Order.

CONCLUSIONS OF LAW

1. Due and regular notice of the time, place and purpose of the hearing was properly given to all interested parties in the form and manner as required by law in the rules and regulations of the Board and the Division.

2. The Board has jurisdiction over all matters covered by the Amended Request for Agency Action, and has the power and authority to render the order herein set forth pursuant to Utah Code Ann. §§ 40-8-14 and 40-8-8.

3. The Amended Request for Agency Action satisfies all statutory and regulatory requirements for the relief sought therein and should be granted.

ORDER

Based upon AGC's Amended Request for Agency Action, the testimony and evidence submitted, and the Findings of Fact and Conclusions of Law stated above, the Board hereby orders:

1. The Amended Request for Agency Action in this cause is granted.
2. The Self Bonding Agreement in the amount of \$189,100.00 is hereby approved.
3. The Escrow Agreement providing for an initial down payment of \$47,275.00 due and payable to the escrow agent within 15 days of the approval of this order and additional annual payments of \$47,275.00 due and payable on or before June 15th in each consecutive year until the full amount of \$189,100.00 has been paid is hereby approved. Said sum shall be provided as collateral for and timely replacement of the Self Bonding Agreement.
4. The Self Bonding Agreement and the Escrow Agreement shall contain default provisions sufficient to protect the interest of the State of Utah. Said agreements are to be reviewed and approved by Division counsel. The final Self Bonding Agreement shall be approved by Board counsel and executed by the Chair of the Board. The final Escrow Agreement shall be reviewed and approved by Division counsel with final approval by Board counsel and likewise executed by the Chair of the Board.

5. Pursuant to the Utah Admin. Code Rule R641-100 et seq. and Utah Code Ann. § 63-46b-6 to -10, the Board has considered and decided this matter as a formal adjudication.

6. This Findings of Fact, Conclusion of Law and Order (“Order”) is based exclusively on the evidence of record in the adjudicative proceeding or on facts officially noted, and constitutes the signed written order stating the Board’s decision and the reasons for the decision, all as required by the Administrative Procedures Act, Utah Code Ann. § 63-46b-10 and Utah Administrative Code Rule R641-109.

7. Notice re: Right to Seek Judicial Review by the Utah Supreme Court or to Request Board Reconsideration: As required by Utah Code Ann. § 63-46b-10(e) to -10(g), the Board hereby notifies all parties in interest that they have the right to seek judicial review of this final Board Order in this formal adjudication by filing a timely appeal with the Utah Supreme Court within 30 days after the date that this Order is issued. Utah Code Ann. § 63-46b-10 and -16. As an alternative to seeking immediate judicial review, and not as a prerequisite to seeking judicial review, the Board also hereby notifies parties that they may elect to request that the Board reconsider this Order, which constitutes a final agency action of the Board. Utah Code Ann. § 63-46b-13, entitled, “Agency review – Reconsideration,” states:

(1)(a) Within 20 days after the date that an order is issued for which review by the agency or by a superior agency under Section 63-46b-12 is unavailable, and if the order would otherwise constitute final agency action, any party may file a

written request for reconsideration with the agency, stating the specific grounds upon which relief is requested.

(b) Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order.

(2) The request for reconsideration shall be filed with the agency and one copy shall be sent by mail to each party by the person making the request.

(3)(a) The agency head, or a person designated for that purpose, shall issue a written order granting the request or denying the request.

(b) If the agency head or a person designated for that purpose does not issue an order within 20 days after the filing of the request, the request for reconsideration shall be considered to be denied.

Id. The Board also hereby notifies the parties that Utah Admin. Code Rule R641-110-100, which is part of a group of Board rules entitled, “Rehearing and Modification of Existing Orders,” states:

Any person affected by a final order or decision of the Board may file a petition for rehearing. Unless otherwise provided, a petition for rehearing must be filed no later than the 10th day of the month following the date of signing of the final order or decision for which the rehearing is sought. A copy of such petition will be served on each other party to the proceeding no later than the 15th day of the month.

Id. See Utah Admin. Code Rule R641-110-200 for the required contents of a petition for Rehearing. If there is any conflict between the deadline in Utah Code Ann. § 63-46b-13 and the deadline in Utah Admin. Code Rule R641-110-100 for moving to rehear this matter, the Board hereby rules that the later of the two deadlines shall be available to any party moving to rehear this matter. If the Board later denies a timely petition for

rehearing, the party may still seek judicial review of the Order by perfecting a timely appeal with the Utah Supreme Court within 30 days thereafter.

8. The Board retains continuing jurisdiction over all the parties and over the subject matter of this cause, except to the extent said jurisdiction may be divested by the filing of a timely appeal to seek judicial review of this order by the Utah Supreme Court.

9. For all purposes, the Chair's signature on a faxed copy of this Order shall be deemed the equivalent of a signed original.

Issued this 31st day of May, 2002.

**STATE OF UTAH
BOARD OF OIL, GAS & MINING**

By: Elise L. Erler
Elise L. Erler, Chair